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No. 81-103
IN THE

Supreme Court of the United States

October Term, 1981.

JEROME L. DOFF, *et al.*,

Petitioner,

vs.

BRUNSWICK CORPORATION,

Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Petitioner has engaged in contumacious behavior over many years. On August 24, 1976, Brunswick served its postjudgment interrogatories on petitioner under Federal Rules of Civil Procedure Rules 33 and 69. (Clerk's Record, pp. 5, 8.) These interrogatories were in aid of execution on Brunswick's judgment against Doff. Rule 33 required Doff to respond within 30 days. He failed to respond. On Brunswick's motion, the District Court on July 6, 1977 ordered Doff to answer. (Clerk's Record, p. 46.) Doff disobeyed the order and failed to answer. On December 5, 1977, the District Court again ordered Doff to answer. (Clerk's Record, p. 67.) Doff disobeyed this order and failed to answer. On February 6, 1978, the District Court imposed sanctions on Doff (Clerk's Record, p. 131.) and on the same date, a year and a half after service of the interrogatories, Bruns-

wick received Doff's purported answers.[1] On April 10, 1978, the District Court ordered Doff to serve further answers.[2] (Clerk's Record, p. 168.) Doff disobeyed this order and failed to serve further answers within the prescribed time. On August 1, 1978, Doff served purported further answers. For the first time, Doff claimed the Fifth Amendment privilege to Interrogatories 30, 32, and 37. Almost two years had elapsed since Brunswick had served the interrogatories on August 24, 1976 and during that period Doff consistently failed to comply with the Rules of Civil Procedure and had disobeyed the District Court's orders of July 6, 1977, December 5, 1977, and April 10, 1978.

Finally, on October 2, 1978, because Doff had disobeyed its order of April 10, 1978 ordering Doff to fully answer Interrogatories 12, 15, 22, 30, 32, 37 and 69, the District Court adjudged Doff in contempt and imposed a daily fine until Doff served full and complete answers to those interrogatories. (Clerk's Record, p. 203.) Doff never has served full and complete answers.

Doff's claim that he raised the Fifth Amendment privilege at the first opportunity in response to interrogatories 30, 32, 37 and 69 is preposterous. Further, he never has stated grounds to assert the privilege nor do such grounds appear from the context in which the privilege was claimed. A witness is not exonerated merely by a declaration of self incrimination. *Hoffman v. United States*, 341 U.S. 479, 486 (1951). Doff had ample opportunity at the October 2, 1978 contempt proceeding to show that his answers to the interrogatories would in fact tend to violate his Fifth Amendment

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[1]Doff's initial answers to Brunswick's interrogatories are set forth in full in Appendix B to Brunswick's Appellee's Brief filed in the Ninth Circuit Court of Appeals.

[2]Doff's further answers are set forth as Appendix C to Brunswick's Appellee's Brief filed in the Ninth Circuit Court of Appeals.

rights under the *Hoffman* test. Nevertheless, Doff made no such showing.

Moreover, Doff failed to interpose the privilege in his initial answers to Interrogatories 30, 32 and 37, filed in February 1978, waiving the privilege in any event. *Rogers v. United States*, 340 U.S. 367, 370-71 (1951).

As to interrogatory 69 to which the Fifth Amendment privilege was interposed in Doff's original but tardy answer served in February 1978, a year and a half after service, the privilege was considered and rejected by the District Court at the hearing on April 10, 1978. (Clerk's Record, p. 168.) By its order of April 10, 1978, the District Court ordered Doff to fully answer Interrogatory No. 69 because Doff had offered no reason why his answer to Brunswick's inquiry whether he had filed federal and state income tax returns and the amount of his reported income would tend to incriminate him. Nonetheless, Doff disobeyed the District Court's order of April 10, 1978 and again asserted the Fifth Amendment privilege in his further answer to Interrogatory No. 69.

Doff's failure to fully answer Interrogatories 30, 32, 37 and 69 as directed by the District Court's orders of April 10, 1978 and October 2, 1978 is attributable to his reluctance to reveal his assets, not to any threatened criminal prosecution. Although hearings were had before the District Court on July 6, 1977, December 5, 1977, February 6, 1978, April 10, 1978 and October 2, 1978, Doff never has suggested how disclosure could be used against him in a criminal prosecution.

Moreover, as to Interrogatories 12, 15 and 22 to which the Fifth Amendment privilege was not interposed, Doff's petition does not challenge the propriety of the District Court's order of October 2, 1978 ordering him to answer

those interrogatories and imposing the daily fine until these interrogatories are fully answered. (Clerk's Record, p. 203.)

Since they were served in August 1976, Doff successfully has evaded answering Brunswick's interrogatories in aid of execution on its judgment entered in 1964. Indeed, by concealment of his assets, Doff successfully has evaded payment of a legitimate debt brought to judgment seventeen years ago.

Doff is a member of the State Bar of California and the Bar of the United States District Court for the Central District of California and, notwithstanding, has displayed blatant contempt for his professional obligations and the judicial process.

The Court of Appeals properly affirmed the District Court's order of October 2, 1978 and with equal propriety this Court should deny the petition.

Respectfully submitted,

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